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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,899	03/29/2001	Jim Paul Haughwout	06975-144001 / Member Ser	5374
26171	7590	01/26/2005	EXAMINER	
THEIN, MARIA TERESA T				
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/819,899

Applicant(s)

HAUGHWOUT, JIM PAUL

Examiner

Marissa Thein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 90-110, 112-124 and 126-137 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 90-110, 112-124, and 126-137 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11-22-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's "Supplemental Amendment in Reply to Action of April 13, 2004" filed on October 21, 2004.

Applicant's response by virtue of amendment to claim 121 has not overcome the Examiner's rejection of such claim under 35 USC 101. Claim 121 fails to recite a computer-readable medium which the applicant has stricken through. Please refer to MPEP 2106.

New claims 135-137 have been added. Claims 111 and 125 are cancelled. Claims 90-110, 112-124, and 126-137 remain pending in this application.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on November 22, 2004 is being considered by the examiner.

Response to Arguments

Applicant's arguments with respect to claims 90-134 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 137 is rejected under 35 U.S.C. 101 because it fails to recite computer readable medium. The claims are directed to computer program, giving the term its broadest reasonable interpretation, the claims are directed to a program per-se and a

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program instruction. Accordingly, the claim fails to recite a positive functional interrelationship between the medium and the program activities. Please refer to MPEP 2106.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 90-110, 112-124, and 126-134 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,134,530 to Bunting et al. in view of U.S. Patent Application Publication No. US 2001/0014868 to Herz et al.

Regarding claim 90, Bunting discloses a process comprising:

- receiving and handling at a customer service call center an incoming service call from a caller seeking assistance (see at least col. 4, lines 28-32; col. 4, lines 52-57; col. 6, lines 15-29; col. 6, lines 59-67; col. 7, lines 1-3); and
- leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services (see at least col. 4, lines 18-32; col. 6, lines 40-51; col. 7, lines 1-23), the leveraging including:
 - identifying a caller identity or a first caller attribute related to the caller (see at least col. 4, lines 18-32; col. 4, lines 40-45; col. 7, lines 13-23; col. 8, lines 56-61; col. 9, lines 21-26);

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- searching a first electronic database (customer profile database) to determine the additional attribute of the caller based on at least one of the caller identity or the first caller attribute, where the first electronic database includes information gathered about the caller prior to the call (see at least col.4, lines 18-32; col. 4, lines 54-61; col. 7, lines 16-32; col. 8, lines 56-60; col. 9, lines 21-26);
- searching a second electronic database of potential sales pitches to identify a first sales pitch based upon the additional attribute of the caller (see at least col. 7, lines 16-32; col. 7, line 53-col. 8, line 8; col. 8, lines 56-60; col. 9, lines 27-32);
- routing the service call to a human operator for presentation of the first sales pitch to the caller (see at least col.6, lines 41-51; col. 7, lines 24-32; col. 8, lines 13-24); and
- assisting the human operator in presenting the first sales pitch to the caller (see at least col.6, lines 41-51; col. 7, lines 24-32; col. 8, lines 13-24).

However, Bunting does not disclose a sales pitch preference of the caller as an additional attribute which is prior to the receipt of the incoming service call from the caller. Bunting discloses a customer profile database for storing plurality of customer types, a sales and service resource profile database for storing a plurality of primary resource types, first overflow resource types and second overflow resource types, a receiver for receiving customer data from a VRU handling a customer call, and processor for determining a customer type based upon the customer data and

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identifying a matching primary resource for routing the customer to the identified primary resource.

Herz, on the other hand, teaches the sales pitch preference of the caller as an additional attribute which is prior to the receipt of the incoming service call from the caller (paragraph 274; paragraph 277).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Bunting to include the sales pitch preference of the caller as an additional attribute, as taught by Herz, in order to provide offers tailored to individual shoppers, or types of shoppers, in a way that attempts to maximize the vendor's profile (Herz paragraph 4).

Regarding claims 91-93, 108-110, and 122-124, Herz discloses the additional attribute of the caller comprises a preference not to receive a sales pitch or any sales pitch; and a preference to receive a certain type of sales pitch (paragraph 274; paragraph 277).

Regarding claims 94-96, 113, and 127, Bunting discloses populating the first electronic database prior to the call with information indicative of the caller; populating the first electronic database with information indicative of a response by the caller to the first sales pitch; and populating the first electronic database with information indicative of responses made by the caller in response to past sales pitch presentations (see at least col. 4, lines 23-32; col. 4, lines 35-39; col. 7, lines 16-32; col. 7, lines 58-61; col. 7, line 64-col. 8, line 7; col. 8, lines 56-60; col. 9, lines 21-26; col. 12, lines 1-55).

Regarding claims 97, 112 and 126, Bunting substantially discloses the claimed invention, however, it does not disclose populating the database with information indicative of past misbehavior of the caller. Bunting discloses the customer's action during the course of the customer contact (col. 4, lines 60-61).

Herz, on the other hand, teaches populating the database with information indicative of past misbehavior of the caller (paragraph 274). Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Bunting, to include the information indicative of past misbehavior of the caller, a taught by Herz, in order to provide offers tailored to individual shoppers, or types of shoppers, in a way that attempts to maximize the vendor's profile (Herz paragraph 4).

Regarding claims 98, 114, and 128, Bunting and Herz substantially discloses the claimed invention, however, it does not explicitly discloses a second sales pitch. However, the combination discloses the matching of sales and service resource skill profiles with a customers provide, contact type and request type thus providing better resource utilization and identifying cross-sell opportunities (Bunting col. 4, lines 19-22). Furthermore, it discloses an intelligent routing technology, which assures that callers are routed to employees with the necessary skills to provide the highest quality of service to the calling customer (Bunting col. 11, lines 56-59). Although the reference does not explicitly disclose the second sales pitch, it would have been obvious to one of ordinary skill in the art to have provided the sales pitch disclosed by Bunting and Herz to have been a second sales pitch, such sales pitch would have been recognized by the

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skilled artisan as being any numerous sales pitches suitable in trying to meet customer needs. Moreover, Applicant has not persuasively demonstrated that the second sales pitch is critical or is anything more than any sales pitch that the skilled artisan would have found suitable for the purpose taught by the combination.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a second sales pitch, such as the sales pitch taught in the combination, for purpose of fulfilling the customer's needs (Bunting, col. 15, lines 54-56).

Regarding claims 99-102, 115-118, and 129-132, Bunting discloses wherein assisting the human operator in presenting the first sale pitch comprises displaying at least a portion of the selected first sales pitch on a display of the human operator (see at least col. 8, lines 13-24); wherein the first sales pitch is identified with the second database only when at least the additional attribute of the caller indicates that the caller satisfies a predetermined criterion (see at least col. 4, lines 23-32; col. 4, lines 35-39; col. 7, lines 16-32; col. 7, lines 58-61; col. 7, line 64-col. 8, line 7; col. 8, lines 56-60; col. 9, lines 21-26; col. 12, lines 1-55); wherein the first caller attribute indicates a geographic residence of the caller, and identifying the first sale pitch includes making unavailable selection one or more sales pitches of the second electronic database based upon the geographic residence of the caller (see at least col. 1, lines 27-31; col. 1, lines 51 – col. 2, line 9; col. 4, lines 23-44; col. 7, lines 16-32); and wherein the additional attribute of the caller includes a credit status for the caller and identifying the first sales pitch includes selecting the first sales pitch for the caller only when the credit

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status of the caller is satisfactory (see at least col. 1, lines 27-31; col. 1, lines 51 – col. 2, line 9; col. 4, lines 23-44; col. 7, lines 16-32; col. 9, lines 34-45).

Regarding claims 103-105, 119-120, and 133-134, Bunting discloses transferring the caller to a commercial partner that provides a product or service that corresponds to the selected first sales pitch if the caller has expressed interest in the first sales pitch (see at least col. 2, lines 23-33; col. 8, lines 44-55; col. 11, lines 14-23; col. 12, lines 6-17; col. 13, lines 30- col. 14, line 5; col. 14, lines 47-52; Figure 12); communicating information related to the caller to the commercial partner substantially in real time (see at least col. 7, line 64- col. 8, line 8); and wherein the information comprises information related to the first sales pitch presented to the caller (see at least col. 2, lines 23-33; col. 8, lines 44-55; col. 11, lines 14-23; col. 12, lines 6-17; col. 13, lines 41 – col. 14, line 5; col. 14, lines 47-52; Figure 12).

Regarding claim 106, Bunting discloses transferring the caller to a commercial partner that provides a product service that corresponds to the selected first sales pitch, wherein the commercial partner provides a second sales pitch to the caller; receiving feedback information from the commercial partner regarding a response by the caller to the second sales pitch; and populating the first electronic database with information indicative of the response by the caller to the second sale pitch. (See at least col. 2, lines 23-33; col. 8, lines 44-47; col. 11, lines 14-23; col. 12, lines 6-17; col. 13, lines 41 – col. 14, line 5; col. 14, lines 47-52; Figure 12)

Regarding claims 107 and 121, Bunting discloses a system and computer program comprising:

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- an identification component or code segment that determines a caller identity related to a caller seeking assistance from a customer service call center (see at least col. 4, lines 18-32; col. 4, lines 40-45; col. 7, lines 13-23; col. 8, lines 56-61; col. 9, lines 21-26);
- a search component configured to identify in the first electronic database (customer profile database) component or code segment that identifies the attribute related to the caller based on the caller identity (see at least col.4, lines 18-32; col. 4, lines 54-61; col. 7, lines 16-32; col. 8, lines 56-60; col. 9, lines 21-26);
- a second electronic database component or code segment that identifies a first sale pitch based on at least one the attribute related to the caller (see at least col. 7, lines 16-32; col. 7, line 53-col. 8, line 8; col. 8, lines 56-60; col. 9, lines 27-32);
- a call router that routes the service call to a human operator to assist the caller and for presentation of the first sales pitch to the caller (see at least col.6, lines 41-51; col. 7, lines 24-32; col. 8, lines 13-24); and
- a presentation component or code segment that assists the human operator to present the first sales pitch to the caller (see at least col.6, lines 41-51; col. 7, lines 24-32; col. 8, lines 13-24).

However, Bunting does not disclose a sales pitch preference of the caller as an additional attribute which is prior to the receipt of the incoming service call form the caller. Bunting discloses a customer profile database for storing plurality of customer types, a sales and service resource profile database for storing a plurality of primary

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resource types, first overflow resource types and second overflow resource types, a receiver for receiving customer data from a VRU handling a customer call, and processor for determining a customer type based upon the customer data and identifying a matching primary resource for routing the customer to the identified primary resource.

Herz, on the other hand, teaches the sales pitch preference of the caller as an additional attribute which is prior to the receipt of the incoming service call from the caller (paragraph 274; paragraph 277).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Bunting to include the sales pitch preference of the caller as an additional attribute, as taught by Herz, in order to provide offers tailored to individual shoppers, or types of shoppers, in a way that attempts to maximize the vendor's profile (Herz paragraph 4).

Claims 135-137 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,134,530 to Bunting et al. in view of U.S. Patent Application Publication No. US 2001/0014868 to Herz et al. in further view of the article "Online Stores Hope Shoppers say Aye to Watchful Assistants" (Online stores).

Regarding claims 135-137, Bunting discloses a process, system and computer program comprising:

- receiving and handling at a customer service call center an incoming service call from a caller seeking assistance (see at least col. 4, lines 28-32; col. 4, lines 52-57; col. 6, lines 15-29; col. 6, lines 59-67; col. 7, lines 1-3); and

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- leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services (see at least col. 4, lines 18-32; col. 6, lines 40-51; col. 7, lines 1-23), the leveraging including:
 - identifying a caller identity or a first caller attribute related to the caller (see at least col. 4, lines 18-32; col. 4, lines 40-45; col. 7, lines 13-23; col. 8, lines 56-61; col. 9, lines 21-26);
 - assisting the human operator to take the service call (see at least col. 6, lines 41-51; col. 7, lines 24-32; col. 8, lines 13-24).

However, Bunting does not disclose storing and searching to identify the information indicative of the past misbehavior of the caller. Bunting discloses the customer's action during the course of the customer contact (col. 4, lines 60-61).

Herz, on the other hand, teaches the storing and searching to identify the information indicative of the past misbehavior of the caller (paragraph 274). Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Bunting, to include the information indicative of past misbehavior of the caller, as taught by Herz, in order to provide offers tailored to individual shoppers, or types of shoppers, in a way that attempts to maximize the vendor's profile (Herz paragraph 4).

In addition, the combination of Bunting and does not disclose the omitting the search or a call router configured to bypass a sales pitch section process and routing the call to a human operator. The combination discloses such attributes might include previously unknown psychographic attributes noted by a salesperson for example a set

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of descriptive terms such as "hostile", "chatty", and "haggler", a textual description of the shopper's response to a particular sales pitch, etc. (Herz, paragraph 274).

The article "Online store", on the other hand, teaches the omitting and bypassing and routing the call to a human operator (whole article). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of Bunting and Herz, to include the omitting and bypassing and routing the call to a human operator, as taught by the article "Online store", in order for the human operator to help the customer out directly and correct any mistakes (the article page 2).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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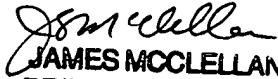
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 703-305-5246. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 703-308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mtot
January 23, 2005


JAMES MCCLELLAN
PRIMARY EXAMINER